



Texas Department of Insurance

Division of Workers' Compensation

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4001 fax • www.tdi.texas.gov

Memorandum

To: Workers' Compensation System Participants

From: Dr. Bill Defoyd, Director for Designated Doctor Oversight and Outreach

Date: December 16, 2013

RE: Analysis Provided to Designated Doctors Pursuant to Texas Labor Code §408.0041(c) and 28 Texas Administrative Code §127.10(a)(2)

The Division of Workers' Compensation (DWC) reminds workers' compensation system participants that pursuant to Texas Labor Code §409.0041 and 28 Texas Administrative Code (TAC) §127.10, only the injured employee's treating doctor and the insurance carrier may send the designated doctor an analysis. This analysis may only cover the injured employee's:

1. medical condition;
2. functional abilities; and
3. return-to-work opportunities.

The analysis may also include supporting information such as videotaped activities of the injured employee, as well as marked copies of the medical records.

It has come to the DWC's attention that some of the analyses provided to designated doctors contain impermissible legal arguments and directives. In some cases, these improper analyses misstate DWC rules and requirements regarding the designated doctor's evaluation. Any impermissible analysis provided to the designated doctor, whether drafted by the insurance carrier, the treating doctor, or their agents constitutes improper communication with the designated doctor and may result in an enforcement action.

System participants should also note that the DWC recently sent the attached communication to designated doctors to reiterate the statutory and rule requirements [Texas Labor Code §408.0041(a)(1) and §408.123(a) and 28 TAC §130.1(b)(4) & (c)(3)].



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Memorandum

To: Designated Doctors

From: Designated Doctor Outreach & Oversight

Date: November 15, 2013

RE: Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment and the DWC Form-032, *Request for Designated Doctor Examination*

The DWC Form-032, the form used by an injured employee, injured employee's representative or insurance carrier to request the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) to order a designated doctor examination, is a useful reference to designated doctors when asked to determine maximum medical improvement (MMI) and impairment rating (IR).

Particularly, boxes 35 through 37 on the DWC Form-032 are resources which can provide guidance to a designated doctor when asked to evaluate MMI/IR, as these boxes outline body parts and diagnoses claimed to apply to the injured employee's compensable injury, specific reason for the dispute regarding MMI/IR, and a description of all injuries determined to be compensable by the TDI-DWC or accepted as compensable by the insurance carrier. Further, if a designated doctor is also asked to evaluate Extent of Injury, box 42c may provide additional information on the injuries in question, claimed to be caused by, or naturally resulting from the work-related accident or incident, as well as a description of the work-related accident or incident that caused the claimed injury.

As a reminder, although the DWC Form-032 should be reviewed for reference, the regulations require the designated doctor to evaluate the condition of the employee considering the medical records and medical examination, and to assign an impairment rating accordingly for the compensable injury. [See Texas Labor Code §408.0041(a)(1) and §408.123(a) and 28 Texas Administrative Code §130.1(b)(4) & (c)(3)]

Finally, in the event the TDI-DWC requires a designated doctor to provide an opinion regarding a specific injury, which has been administratively determined to be part of the compensable injury, the designated doctor must comply with any specific request of the TDI-DWC.

To reference a copy of the DWC Form-032, visit the TDI website at <http://www.tdi.texas.gov/forms/form20.html>.